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May 6, 2011

The Honorable Barbara B. Crabb
United States District Court
Western District of Wisconsin
120 North Henry Street, Room 302
P.O. Box 432
Madison, WI 53701-0432

RE: Apple Inc. v. Motorola Mobility, Inc., No. 11-cv-178

Dear Judge Crabb:

We write in response to Your Honor's request at the April 26, 2011 Preliminary Injunction Hearing for a proposal on how to proceed with the instant litigation, Apple Inc. v. Motorola Mobility, Inc., No. 11-cv-178. Plaintiff Apple Inc. ("Apple") has conferred with counsel for Defendant Motorola Mobility, Inc. ("Motorola") and the parties have agreed to submit separate letters for your consideration. Apple respectfully request that the June 2, 2011 Case Management Conference currently scheduled with Magistrate Judge Stephen L. Crocker be rescheduled to an earlier date before Your Honor to discuss the parties' proposals.

In its Opposition to Plaintiff's Motion for Preliminary Injunction, Motorola proposed to sever Apple's claims and have the claims related to the two ITC patents consolidated with the claims in Apple Inc. v. Motorola, Inc. and Motorola Mobility, Inc., Case Nos. 10-cv-00661 (W.D. Wi.) (the "661 Action"), which is currently stayed. Motorola further proposed that the claims related to the remaining five patents be consolidated with the claims in Apple Inc. v. Motorola, Inc. and Motorola Mobility, Inc., 10-cv-662 (W.D. Wi.) (the "662 Action"), which is before this Court. See Motorola Opp'n to Plaintiff's Mot. for Preliminary Injunction at 12-17.

Apple believes that Motorola's proposal is not in the best interest of the Court and would seriously prejudice Apple. First, Motorola's requests to sever Apple's claims would undermine judicial economy and delay prompt resolution of the issues in this matter by forcing Apple to wait to raise its FRAND claims as an affirmative defense in the patent infringement actions when a quick resolution of the FRAND claims would obviate the need for a resolution of the infringement claims. Indeed, this was the exact purpose of the SSOs' IPR Policies.

Second, Motorola fails to explain how it would even be possible to sever Apple's counterclaims. Apple's counterclaims which were removed as required by statute, include claims such as antitrust violation, unfair competition, tortious interference, and breach of contract that encompass not only acts relating to patents in the '661 Action and '662 Action, but also acts that extend beyond the issues in both of those actions. Indeed, Motorola's proposal

could result in these claims be litigated twice, but each time artificially narrowed to the particular patents at issue in that particular litigation. This could lead to inconsistent results and would prolong resolution of these claims and would be extremely wasteful.

Apple proposes that this Court proceed with the instant litigation on an accelerated schedule. As Your Honor is aware, Apple has filed a thirteen-count complaint that includes breach of contract claims based on Motorola's FRAND obligations. Resolution of these claims will likely resolve many of the disputes between Apple and Motorola, and therefore, alleviate the need for the resolution of the infringement actions related to the essential patents before this Court. We believe this proposal will result in an efficient and streamlined process of all the cases before Your Honor. Alternatively, Apple proposes that this action be consolidated in its entirety with the '662 Action.

Very truly yours,

GODFREY & KAHN, S.C.

James D. Peterson

JDP:saw

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